

MEETING OF THE COURT OF SESSION ARBITRATION COURT USER GROUP

Wednesday 01 June 2022 at 4.15pm

1. Attendance

Lord Glennie

Lord Clark

Stephen Alexander, Depute Clerk of Session and Justiciary

Brandon Malone, Chair of the Scottish Arbitration Centre

Robert Howie QC

Sheila Webster, solicitor and partner in Davidson Chalmers LLP

David Anderson, solicitor and partner in Shepherd and Wedderburn LLP

Rob Wilson, partner and solicitor-advocate in CMS Cameron McKenna Nabarro Olswang LLP.

Janey L. Milligan, Managing Director, Construction Dispute Resolution

2. Apologies

Apologies were received from the following members of the group who could not attend this meeting: Jonathan Broome, Gary Borland QC, David Turner, Andrew Mackenzie, Shona Frame and Torquil Murray.

3. Minutes of last meeting

Lord Clark explained that various factors had affected updating the User Group web page. There also remained an issue raised by Gary Borland QC at an earlier meeting, about including in the list of court Opinions those which are not directly about arbitration appeals but have some relevance for arbitration purposes (such as where an issue is raised about whether the matter should be determined by arbitration rather than by the court). After discussion, it was agreed that this matter, looking as far back as 2010, and any other issues regarding content of the web page should be dealt with by a working group of members. Rob Wilson, Brandon Malone and David Anderson agreed to be in the working group, which will be chaired by Robert Howie QC. Lord Glennie added that the User Group web page could refer to the construction of arbitration contracts.

4. Update on ICCA Congress 2022

Brandon Malone gave an update about the Congress, with contributions from the other members in attendance. This included the number of people expected to attend, how the programme has been revised, associated or fringe events and social plans. It was anticipated that up to 1,000 people would attend, with many from England and abroad. There would be a discounted rate for local practitioners. It was agreed that enquiries should be made as to whether or not attendance could qualify for CPD. Arbitration Judges will be able attend. Limited virtual attendance may be arranged. It is an important event and could assist in promoting dispute resolution in Scotland. It was thought that engagement with the Faculty of Advocates was important and that details of the event could be advertised on the Faculty notice board. Lord Glennie further enquired if the Faculty Arbitration Group could be contacted.

5. Views on remote hearings in arbitrations and court business

Members of the group shared their views about remote hearings. Lord Clark commented upon how the commercial courts had been dealing with remote hearings, including the updating of technology in the courts and the use of electronic documents. A number of positive and negative points were mentioned. Rob Wilson commented on witnesses being able to give evidence from various places, but on the other hand being less able to be controlled or supervised. The use of legally qualified observers, to be in attendance with witnesses giving evidence , was discussed. For small firms, being asked to prepare an electronic bundle of documents could be an issue and parity between parties in respect of technology was important. Robert Howie QC observed that difficulties arise if, in the course of examination, counsel wishes to put before a witness a document which relates to credibility and how that is done in a remote hearing. The matter of document confidentiality was also highlighted. Lord Glennie referred to difficulties in highlighting electronic documents compared to papers.

6. Feedback on how the court is dealing with arbitration matters

Robert Howie QC observed that there were some negative effects of anonymity in court arbitration decisions, including difficulty in accessing cases. The matter of confidentiality was under review in England.

7. AOB

Lord Clark raised the matter of when meetings should take place and it was agreed that, if possible, meeting three times each year would be appropriate.

8. Next Meeting

The next meeting is likely to be in late October or early November this year (2022).